IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1960

No 5[illegible]

[illegible]SSIE LEE HALL, Petitioner,

versus

[illegible]ED STATES OF AMERICA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

IVAN A. McINNIS,
[illegible]
[illegible]

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ROSSIE LEE HALL, - - - - - - *Petitioner,*

v.

UNITED STATES OF AMERICA, - - - *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Rossie Lee Hall, the petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled cause on June 22, 1960. On August 24, 1960 the Court of Appeals granted leave to appellant to file a petition for rehearing within 20 days from August 24th. Petition for rehearing was duly filed within this time, and was denied by the Court of Appeals on September 27, 1960.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Seventh Circuit is printed in Appendix A hereto, *infra*, page 11.

QUESTION PRESENTED.

Whether the facts in affidavit for search warrant in the instant case show probable cause for issuance of warrant.

STATUTE INVOLVED.

Fourth Amendment to the United States Constitution:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fifth Amendment to the United States Constitution:

> "No person shall be held to answer * * *; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; * * *."

STATEMENT.

Petitioner was charged by indictment with possession of an unregistered still; making mash; and interfering with an Alcohol and Tobacco Tax Investigator in his service of a search warrant. The District Court for the Southern District of Indiana, New Albany Divsion, overruled petitioner's motion to quash the search warrant and for return of propery, and to suppress evidence, and over objection permitted to use of evidence and information obtained by virtue of this warrant. The case was tried before a jury, and petitioner was found guilty on all three counts, upon which the court entered judgment and sentenced petitioner. The Court of Appeals sustained the District Court. The following section amplifies the question involved herein.

REASONS FOR GRANTING THIS WRIT.

"This (second clause of the Fourth Amendment) prevents the issue of warrants on loose, vague or doubtful bases of fact. * * * the amendment is to be liberally construed and all owe the duty of vigilance for its effective enforcement less there be impairment of the rights for the protection of which it was adopted." Go-Bart Importing Company, *et al.* v. United States, 282 U. S. 344, 357, 51 S. Ct. 153, 158, 75 L. Ed. 374.

In this cause the Court of Appeals concluded that an affidavit which reads as follows:

> "On January 10, 1959, at 7:30 P.M. Investigators Guernsey, Kafoglis, Stocking and Rea followed a 1957 Ford Sedan away from the Hall premises and noted that the car was from Jefferson County, Kentucky and was occupied by three colored individuals and searched it and found therein 400 pounds of sugar. The owner and driver, Mary Peoples stated that she had taken the sugar to the Hall premises to leave it there but Hall told her to take it away as his place was too hot. The investigators then set up surveillance near the Hall premises for 2 hours and all during the time noted the odors of fermenting mash coming directly from the Hall house and building."

was sufficient evidence of probable cause to justify the issuance of a search warrant and that the District Court acted correctly and without error in refusing to quash the search warrant or to order the return of the property and permitting the use of the evidence and information obtained by the search.

In support of this opinion the Court of Appeals cites Jones v. United States, 362 U. S. 257 (1960), and Draper v. United States, 358 U. S. 307 (1959).

Appellant respectfully submits to the Court that the above decisions are not a blanket endorsement of hearsay as probable cause on which to base a search warrant, but require, before hearsay is accepted, the following (none of which are present in the instant case):

1. That the officer had been told by one who claimed to have bought narcotics there that the accused was selling narcotics in the apartment to be searched.
2. That the officer's informant had previously given accurate information.
3. That the informant's story was corroborated by other sources of information.
4. That the accused was known by the police to be a user of narcotics.

The instant case is not a narcotics case, but an alcohol tax case, but aplying the principles of the Jones and Draper cases, both of which were narcotic cases, to the instant case, *NONE OF THE FOUR* qualifying points which the Court relied on in accepting hearsay in the Jones and Draper cases are present in the instant case.

In illustration of the point appellant is trying to make may we quote the following from the Jones case (page 708 of 4 L. Ed. 2d):

> "Thus we may assume that Didone had the day before been told by one who claimed to have bought narcotics there, that petitioner was *SELLING NARCOTICS IN THE APARTMENT*: HAD THAT BEEN ALL, IT MIGHT NOT HAVE BEEN ENOUGH; BUT DIDONE SWORE TO A BASIS FOR ACCEPTING THE INFORMANT'S STORY. The informant had previously given accurate information. History was corroborated by other sources of information. And petitioner was known by the